

LUKAS, NACE, GUTIERREZ & SACHS

CHARTERED

1111 NINETEENTH STREET, N.W.

SUITE 1200

WASHINGTON, D.C. 20036

(202) 857-3500

RUSSELL D. LUKAS  
DAVID L. NACE  
THOMAS GUTIERREZ  
ELIZABETH R. SACHS  
GEORGE L. LYON, JR.  
JOEL R. KASWELL  
PAMELA L. GIST  
DAVID A. LAFURIA  
MARILYN SUCHECKI MENSE  
PAMELA A. GAARY HOLRAN  
B. LYNN F. RATNAVALE  
TODD SLAMOWITZ  
DAVID M. BRIGLIA  
ALLISON M. JONES  
STEVEN M. CHERNOFF

† NOT ADMITTED IN D.C.

CONSULTING ENGINEERS  
ALI KUZEHKANANI  
LEROY A. ADAM  
LEILA REZANAVAZ

—  
OF COUNSEL  
JOHN J. MCAVOY  
J.K. HAGE III†  
LEONARD S. KOLSKY†

—  
TELECOPIER  
(202) 857-5747

—  
<http://www.fcclaw.com>

—  
WRITER'S DIRECT DIAL

(202) 828-8430

October 25, 2002

By Electronic Filing

Marlene H. Dortch, Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Room TW-B204  
Washington, DC 20554

Re: **Federal-State Joint Board on Universal Service**  
***Ex parte* presentation**  
CC Docket Nos. 96-45, 98-171, 90-571, 92-237,  
99-200, 95-116, 98-170, and NSD File No. L-00-72

Dear Ms. Dortch:

On behalf of Midwest Wireless Communications LLC, Midwest Wireless Iowa LLC, and Midwest Wireless Wisconsin LLC (collectively "Midwest Wireless"), this *ex parte* letter is submitted to comment on the above-referenced universal service contribution methodology proceeding.

As set forth below, Midwest Wireless objects to the various proposals to assess contributions on a per-connection basis because they are unnecessary, unworkable, and contrary to the mandate under Section 254(d) of the Act that any contribution regime must be equitable and nondiscriminatory. Rather, Midwest Wireless agrees with the majority of commenters and *ex parte* filers that the Commission should retain the current interstate revenue-based contribution regime, possibly with some modifications.<sup>1</sup>

---

<sup>1</sup> See, e.g., Allied Personal Communications Association of California ("Allied") Comments at pp. 10-11 (filed April 22, 2002); Consumers Union Comments at 16-17 (filed April 22, 2002); Arch Wireless, Inc. Comments at p. 2 (filed April 22, 2002); California Public Utilities Commission ("CPUC") Comments at p. 4 (filed April 22, 2002); CTIA Reply

1. The Connections-based Proposals Violate the Statutory Mandate Under 47 U.S.C. § 254(d) That Every Provider of Interstate Services Be Assessed Contributions in an Equitable and Nondiscriminatory Manner

Those advocating connections-based contribution regimes have failed to present an alternative to the current system that would satisfy the clear directives of Section 254(d) that:

*Every telecommunications carrier that provides interstate telecommunications service shall contribute, on an equitable and nondiscriminatory basis, to the specific, predictable, and sufficient mechanisms established by the Commission to preserve and advance universal service.<sup>2</sup> (emphasis added)*

The proposal by the Coalition for Sustainable Universal Service (“CoSUS”) violates this statutory mandate by shifting the contribution burden from interexchange carriers (“IXCs”) — who remain the largest recipients of interstate revenues — onto other classes of carriers, notably local exchange carriers (“LECs”) and wireless carriers. In fact, the CoSUS proposal entirely exempts from contributions any IXC that does not provide end-user interstate connections, such as special access and private lines.<sup>3</sup> Moreover, IXCs would not have to share any of the contribution burden on interstate service jointly provided through LEC access lines, even though IXCs generate revenue directly from such service.<sup>4</sup>

---

Comments at p. 7 (filed May 14, 2002); NASUCA Comments at p. 2 (filed April 22, 2002); NECA Comments at p. 3 (filed April 22, 2002); Nextel Reply Comments at pp. 2-3 (filed May 13, 2002); NTCA Comments at pp. 4-5 (filed April 22, 2002); Rural Cellular Association (“RCA”) Comments at p. 2 (filed April 22, 2002); TracFone Wireless, Inc. Comments at pp. 17-19 (filed April 22, 2002); United States Cellular Corporation (“USCC”) Comments at p. 3 (filed April 22, 2002); VoiceStream Comments at pp. 4, 7-8 (filed April 22, 2002); Verizon Wireless Comments at pp. 15-18 (filed April 22, 2002); Western Wireless Comments at pp. 2-4 (filed April 22, 2002).

<sup>2</sup> 47 U.S.C. § 254(d).

<sup>3</sup> See CoSUS *ex parte* letter dated Sept. 26, 2002, at pp. 5-6.

<sup>4</sup> See *id.* at p. 6. CoSUS turns logical somersaults in arguing that “assessing transmission connections as well as network connections is functionally duplicative[.]” *Id.* Midwest Wireless notes that Section 254(d) contains no exemption for providers of interstate service who provide such service over “transmission connections.”

In addition to largely relieving IXC's of their obligation to contribute as providers of interstate telecommunications service, the CoSUS proposal violates the requirement that contributions be "equitable and nondiscriminatory." Specifically, the plan would unfairly burden wireless carriers, whose contributions would increase to up to four times their current levels.<sup>5</sup> Recent submissions by CTIA suggest a range of interstate wireless calling from 10% to 28.5%.<sup>6</sup> Because there has been no increase in wireless interstate usage that would justify such a radical increase in their contributions, the connections-based plans would unfairly shift the burden onto wireless carriers. As a consequence of the higher prices that come with radically increased contributions, consumers would increasingly opt for other technologies.

The CoSUS proposal, as well as the modified version by SBC and BellSouth, is also discriminatory in that it unduly benefits large businesses who use high-bandwidth or Centrex service. First, the "residual" nature of assessments on multiple-line businesses unfairly benefits large business users at the expense of residential and small business customers.<sup>7</sup> Second, as Verizon Wireless recently noted, the CoSUS plan would only assess \$0.40-\$0.50 per Centrex line while imposing a \$1 charge on residential wireline and wireless connections.<sup>8</sup> SBC/BellSouth's modifications only exacerbate these fundamental disparities, assigning, for example, only 1/9 of a connection assessment for each Centrex line while each wireless line would be assigned 2 full connection assessments.<sup>9</sup>

Finally, the connections-based proposals unfairly place a disproportionate burden on low-income and low-volume users, including customers who purchase wireless phones only for occasional or emergency use.<sup>10</sup> There is no rational basis for treating a "peace of mind" cell phone the same as one used by a high-volume user who has a nationwide one-rate plan and makes many interstate calls. The issue is not whether low-volume users are a "protected class."<sup>11</sup> Rather, it is whether it would be unfair and unlawful to levy a disproportionate assessment on connections that may yield no interstate usage or revenue at all — especially when the resulting

---

<sup>5</sup> See Nextel Reply Comments at p. 4; USCC Comments at p. 8.

<sup>6</sup> See CTIA *ex parte* letter dated Oct. 22, 2002.

<sup>7</sup> See Nextel Reply Comments at p. 3.

<sup>8</sup> See Verizon Wireless *ex parte* letter dated Oct. 3, 2002, at pp. 2-3.

<sup>9</sup> See SBC Comments at Appendix 2; SBC/BellSouth *ex parte* letter dated Oct. 10, 2002, at p. 2.

<sup>10</sup> See CTIA Reply Comments at pp. 5-6; Consumer Union Comments at pp. 11-12.

<sup>11</sup> See CoSUS Reply Comments at p. 64 (filed May 13, 2002).

price increases would mean placing the public-safety benefits of mobile phones beyond the reach of many consumers.

2. There is No Factual Basis for the Connections-based Proposals

No credible justification for the self-serving burden shifts in the connections-based proposals has been proffered. Instead, it is suggested that a decline in IXC's interstate wireline revenues, coupled with increasing USF funding needs, is creating an untenable "death spiral" in which future funding needs may not be met.<sup>12</sup> However, as several commenters have observed, any declines in interstate revenue resulting from migration of customers from IXC's have been offset by major increases in interstate revenues IXC's receive from wireless carriers and LECs.<sup>13</sup>

Moreover, to the extent the CoSUS proposal is aimed at addressing migration to wireless service specifically, such migration has not resulted in a concomitant loss in the contribution base. As Nextel recently noted, wireless revenues have grown from \$28 billion to \$65 billion annually over the last five years, resulting in dramatic increases in wireless USF contributions.<sup>14</sup> Thus, the picture painted by CoSUS and its supporters — that the IXC's loss of subscriber revenue is destroying universal service — is not supported by the facts.

As many commenters have noted, there are many ways to address shortfalls in contributions without violating Section 254(d) and without creating huge administrative burdens and uncertainties as the CoSUS and SBC/BellSouth proposals would (*see infra*). For example, the Commission could expand the pool of recoverable revenues to include switched access and other wholesale revenues.<sup>15</sup> Another sensible step would be to broaden the universe of contributors to include broadband Internet access services.<sup>16</sup>

---

<sup>12</sup> See *Federal-State Joint Board on Universal Service*, CC Docket Nos. 96-45, 98-171, 90-571, 92-237, 99-200, 95-200, 95-116, 98-170, and NSD File No. L-00-72, *Further Notice of Proposed Rulemaking*, FCC 02-43 at ¶ 7 (rel. Feb. 26, 2002) ("FNPRM"); AT&T *ex parte* letter dated Oct. 22, 2002, at p. 1.

<sup>13</sup> See, e.g., VoiceStream Comments at p. 8; Verizon Wireless *ex parte* letter dated Oct. 23, 2002, at p. 2.

<sup>14</sup> See Nextel *ex parte* letter dated Oct. 11, 2002, at p. 3.

<sup>15</sup> See Nextel Reply Comments at pp. 10-12.

<sup>16</sup> See *id.* at pp. 13-14; NRTA and OPASTCO Comments at pp. 12-17 (filed April 22, 2002); USCC Comments at p. 10; CTIA Reply Comments at p. 7; SBC *ex parte* letter dated Oct. 10, 2002, at p. 4.

3. Implementation of the Proposals Would Be Administratively Burdensome

The CoSUS and SBC/BellSouth plans would impose onerous administrative burdens and uncertainties on contributors, the FCC and the Universal Service Administrative Company (“USAC”). The tiered system for determining contribution levels for multiple-line businesses would require the FCC to establish equivalency ratios to tie “equivalent” bandwidth to per-connection assessments — a prospect that led the FCC to reject a connections-based contribution methodology in the first place.<sup>17</sup> Moreover, USAC would be forced to overhaul its billing and collection systems, develop new audit systems, and maintain billing and collection activities on a monthly basis,<sup>18</sup> and carriers would be required to submit monthly reports.<sup>19</sup> In light of these added layers of reporting, analysis, processing, and expense, the per-connection proposals would be highly problematic in their implementation.

4. The Commission Should Retain the Wireless Safe Harbor

Midwest Wireless agrees with the large number of commenters and *ex parte* filers who argue that the wireless safe harbor should be retained in some form.<sup>20</sup> The safe harbor was established to address the impossibility of calculating the percentage of interstate wireless usage while avoiding costly reporting systems to track the relevant information. Despite their claim that the safe harbor unfairly advantages wireless carriers,<sup>21</sup> CoSUS and its supporters have failed to demonstrate that wireless carriers are paying less than their fair share of USF contributions. Indeed, it is undeniable that, as wireless revenues grow, total wireless contributions grow correspondingly.

---

<sup>17</sup> See *FNPRM* at ¶ 44.

<sup>18</sup> See VoiceStream Comments at pp. 18-19, *citing* USAC Comments, CC Docket No. 96-45, at pp. 16-17 (filed June 25, 2001) and USAC Reply Comments, CC Docket No. 96-45, at 14-15 (filed July 9, 2001).

<sup>19</sup> See CTIA Reply Comments at p. 8.

<sup>20</sup> See, e.g., AT&T Wireless Services, Inc. *ex parte* letter dated Oct. 21, 2002, at p. 2; CPUC Comments at p. 10; CTIA Reply Comments at p. 2; Nextel Reply Comments at pp. 16-17; Sprint Reply Comments at pp. 7-9 (filed May 13, 2002); TracFone Wireless Comments at pp. 18-19; Verizon Wireless Comments at pp. 16-17; VoiceStream Reply Comments at pp. 20-23; WorldCom Reply Comments at pp. 5-6 (filed May 13, 2002).

<sup>21</sup> See CoSUS *ex parte* letter dated Oct. 10, 2002, at pp. 1-3; CoSUS *ex parte* letter dated Sept. 26, 2002, at p. 4; AT&T *ex parte* letter dated Oct. 22, 2002, at p. 1.

Marlene H. Dortch, Secretary  
October 25, 2002  
Page 6 of 6

CoSUS's apples-to-oranges view holds that competitive neutrality means assessing the same amount on all industry segments. As Nextel has noted, however, the differentiation between contribution levels among various industry segments reflects the different amounts of interstate telecommunications revenue brought in by each segment.<sup>22</sup>

In sum, the current wireless safe harbor is equitable and nondiscriminatory and should be retained. However, should the FCC deem it appropriate to alter the wireless safe harbor, Midwest Wireless would support a modest increase above the current 15% standard. It should be relatively simple for the FCC to use existing data to calculate the effect of an incremental increase in the safe harbor percentage. The system is in place and it works. Adjusting the safe harbor percentage would impose no administrative burdens on licensees or USAC.

Midwest Wireless appreciates this opportunity to convey its views on the issues presented in this proceeding. If you have any questions, please contact the undersigned.

Very truly yours,



David L. Nace  
David A. LaFuria  
Steven M. Chernoff

cc: Chairman Michael K. Powell  
Commissioner Kathleen Q. Abernathy  
Commissioner Michael J. Copps  
Commissioner Kevin J. Martin  
Christopher Libertelli, Esq.  
Bryan Tramont, Esq.  
John Branscome, Esq.  
Matthew Brill, Esq.  
Jordan Goldstein, Esq.  
Sam Feder, Esq.  
William Maher, Esq.  
Carol Matthey, Esq.  
Eric Einhorn, Esq.  
Jessica Rosenworcel, Esq.  
Paul Garnett, Esq.  
Rose Crellin, Esq.

---

<sup>22</sup> See Nextel Reply Comments at p. 16.